

August 26, 2011

To: Executive Board

Subject: **Revisions to Procurement Policies and Procedures**

Recommendation

Approve one revised Procurement Policy, one new Procurement Policy and several revised Procurement Procedures.

Analysis

In the past year, the Federal Transit Administration (FTA) has conducted two Procurement System Reviews and one Triennial Review of Foothill Transit. Each of the reviews has resulted in recommendations that Foothill Transit either adopt new Procurement Policies and Procedures or revise existing Policies and Procedures (**Attachment A**) to fully comply with the FTA's Third Party Contracting Guidance.

- The recommended revised Policy addresses documentation required to be prepared and maintained for each procurement addressing steps to be taken by the Director of Procurement to ensure that all procurement transactions are conducted in a manner that provides full and open competition.
- The recommended new Policy requires that an accurate written account of each procurement be maintained in the official procurement files, and directs the Director of Procurement to ensure that procurement history documentation is updated as a procurement progresses.
- The recommended revised Procedures address the following:

Documentation for Sole Source Procurements

For each Sole Source Procurement sufficient documentation will be provided justifying the reason that only one supplier is acceptable.

Requirement for a cost analysis to be conducted for each Sole Source Procurement

In those instances where goods or services are procured after a procurement solicitation results in only a single proposer or bidder, or where only a single source is available to provide the required goods or services, a cost analysis will be performed.

Utilization of the California Multiple Award Schedule

The California Multiple Award Schedules (CMAS) offers a wide variety of commodities and information technology products and services at prices which

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have been assessed to be fair, reasonable and competitive. Suppliers may apply for a CMAS contract at anytime - no bids are required. The use of these contracts is optional and is available to state and local government agencies.

Requirements for the preparation of Independent Cost Estimates

Prior to the initiation of any procurement action, an estimate of the cost of the required goods or services that is independent of the proposals or bids received will be performed.

Conduct of price or cost analyses

For all procurements, an analysis will be performed to determine whether the cost or price is fair and reasonable.

Timing of submittal of protests

Extension of time for bid protests that allege improprieties in a solicitation process, or in solicitation documents, or improprieties involving the approval or award or proposed award of a contract.

Sincerely,



Edward J. Gill, Jr.
Special Legal Counsel



Doran J. Barnes
Executive Director

Attachment



Foothill Transit

**Procurement
Policies and Procedures
Manual**

August April 2011

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INTRODUCTION

Foothill Transit has major responsibilities, which include the operation of a public transportation system and the planning, design and programming of transportation projects. All contracts are awarded by Foothill Transit by its own procurement office, which is responsible for identifying the needs of Foothill Transit and originating the procurement package for supplying those needs.

Foothill Transit receives funding from both the federal government and the state. Therefore, Foothill Transit adopts procurement policies and procedures that are consistent with federal regulations and the laws of the state of California. These procedures apply to all procurements irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Transit Administration are so identified. These procedures apply to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing a Federal Transit Administration-funded asset.

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and Architectural/Engineering services necessary for the operation of Foothill Transit's transit service. These procedures include guidelines for the solicitation, award and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated and Architectural/Engineering contracts.

The procurement procedures are designed to:

- Instill public confidence in the procurement process of Foothill Transit.
- Ensure fair and equitable treatment for all vendors who seek to deal with Foothill Transit.
- Ensure maximum open and free competition in the expenditure of public funds.
- Provide the safeguards to maintain a procurement system of quality and integrity.

The methods by which the foregoing are implemented are described in detail in the remainder of this document and the attachments hereto.

The procurement process is ongoing throughout the fiscal year. During budget preparation, each department head should identify, to the extent possible, all goods and services that will need to be procured during the upcoming fiscal year (July 1 - June 30).

CHAPTER I - LEVELS OF APPROVAL

For all procurements, with the exception of those using the informal process, there are two phases of the process that need to be approved:

- Issuance of the solicitation document
- Contract award

In this chapter the levels set forth apply to both the approval of the issuance of the solicitation document and the approval of the resulting contract.

A. Goods and Services

Except for Blanket Purchase Orders, procurements of services, supplies, or other property, with the exception of Architectural and Engineering services and public works/construction projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$5,000*	Micro Purchase	Department Directors
\$5,000- \$20,000**	Small Purchase	Department Directors
\$20,000 - \$100,000	RFP or IFB	Executive Director
Greater than \$100,000	RFP or IFB	Executive Board

*Less than \$3,000 when Federal Funds are used.

**\$3,000 - \$20,000 when Federal Funds are used.

Please note that Department Directors are not authorized to delegate their approval authority.

B. Architectural and Engineering Services

Procurement of professional consultants for engineering, architectural, land surveying or other support services, such as program management, construction management, feasibility studies, preliminary engineering and design which require performance by a registered or licensed architect or engineer.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$10,000	RFP	Director of Facilities
\$10,000 - \$100,000	RFP	Executive Director
Greater than \$100,000	RFP	Executive Board

C. Public Works/Construction Projects

Procurements of labor and/or materials for construction or public works projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$6,500	Small Purchase	Director of Facilities
\$6,500 - \$100,000	IFB	Executive Director
Greater than \$100,000	IFB	Executive Board

D. Sole Source

Procurement accomplished through solicitation or acceptance of a proposal from only one available source or solicitation of a number of sources in which competition is determined inadequate.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$10,000	Sole Source	Director of Procurement
\$10,000-\$100,000	Sole Source	Executive Director
Greater than \$100,000	Sole Source	Executive Board

E. Change Orders and Amendments

Except as provided below, any amendments and/or individual change orders will be approved at the same price threshold as the underlying contract (e.g., a change order of between \$10,000 and \$100,000 must be approved by the Executive Director; a change order of over \$100,000 must be approved by the Executive Board.) When the cumulative value of all amendments or change orders to a contract exceeds \$10,000, all future individual amendments or change orders for that contract must be approved by the Executive Director. When the cumulative value of all amendments or change orders to a contract exceeds \$100,000, all future individual amendments or change orders for that contract must be approved by the Executive Board (e.g., if there have been four change orders for a contract totaling \$90,000, and there is a fifth change order for \$10,000, the fifth change order and all future change orders must be approved by the Executive Board.) For contracts with a value of over Five Million Dollars (\$5,000,000), the Executive Director is authorized to approve individual change orders with a value equal to five percent (5%) or less. When the cumulative value of all change orders for such contracts exceeds five percent (5%), all future individual change orders for that contract must be approved by the Executive Board.

F. Delegations

Except as otherwise provided in these procedures, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction vested in the Executive Director are hereby delegated to the Deputy Executive Director. Except

as provided in these procedures, all rights, powers, duties and authorities delegated to the Deputy Executive Director are, in turn, delegated to the Director of Procurement .

The Executive Board is specifically authorized to execute approval authorized at any level.

The Executive Director and/or the Deputy Executive Director are specifically authorized to execute approvals delegated to the Director of Procurement.

CHAPTER II–POLICIES

Foothill Transit is governed by a five-member Executive Board. Among other duties, Foothill Transit's Executive Board is responsible for establishing policies which guide the operation of Foothill Transit. It is in that capacity that the Board adopted a set of procurement policies. These policies serve as a base upon which procurement procedures can be developed.

Foothill Transit's Board has adopted related policies which serve to guide procurement activities. Those policies are summarized in this Section.

A. Revision of Procurement Procedures

The Director of Procurement is responsible for updating and clarifying these procurement procedures on an as-needed basis. All substantive changes to procurement policies shall be reviewed and approved by the Executive Board.

B. Standards of Conduct and Conflict of Interest Policies

There will be uniform and equitable application of the Standards of Conduct of Foothill Transit involving all activities associated with the procurement of goods and services. This section defines responsibility to identify and prevent a real or apparent conflict of interest.

1. Conflict of Interest

No Executive Board member, management consulting staff of Foothill Transit, nor any of his or her immediate family, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award. In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the Executive Board. If anyone fails to report such benefit, he or she will be subject to any disciplinary proceeding deemed appropriate by the Executive Board, including possible dismissal.

Executive Board members and management consulting staff of Foothill Transit shall be subject to the conflict of interest laws of the state of California. Anyone who violates the standards of the law shall be subject to the penalties, sanctions or other disciplinary actions provided for therein.

2. Gratuities, Kickbacks, and Contingent Fees

No Executive Board member nor management consulting staff of Foothill Transit shall solicit, demand or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities and favors except as the receipt and reporting of gifts is permitted by

The Political Reform Act (Government Code Section 81000, *et seq.*). Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by Foothill Transit, including possible dismissal.

3. Confidential Information

No Executive Board member nor management consulting staff of Foothill Transit shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by Foothill Transit, including possible dismissal.

4. Organizational Conflict of Interest

Each entity that enters into a contract with Foothill Transit is required, prior to entering into such contract, to inform Foothill Transit of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when any of the following circumstances arise:

- a. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to Foothill Transit due to other activities, relationships, contracts, or circumstances.
- b. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- c. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

C. Purchasing Policies

1. Equal Employment Opportunity/Affirmative Action

All procurement documents issued by Foothill Transit require all interested vendors to certify:

- a. That the vendor does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability or national origin;

- b. That the vendor is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
- c. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

2. Disadvantaged Business Enterprise

a. General Policy

The Executive Board of Foothill Transit has determined as a matter of policy that whenever Federal funds are used to support a procurement, disadvantaged business enterprises (DBEs), as defined in 49 C.F.R. Part 26, shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, and as required by 49 C.F.R. Section 26.13, each prime contract signed by Foothill Transit (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Foothill Transit deems appropriate.

b. Contract Goals

Foothill Transit's DBE Liaison Officer shall be responsible for determining whether to establish a DBE goal for each federally-assisted contract. The setting of DBE contract goals shall be consistent with the provisions of 49 C.F.R. §§ 26.51(c) through (f).

c. Contractor Compliance

Proposers and bidders must take necessary and reasonable steps to ensure that DBEs have a fair opportunity to participate in the proposed contract and/or subcontracts. If a proposer or bidder qualifies as a certified DBE or is joint venturing with a certified DBE, a copy of the DBE certification(s), and a description of the dollar value of the proposed work that it intends to perform with its own forces, together with a statement of the percentage interest in the

contract held by a joint venturer DBE must be submitted with its proposal or bid. If a proposer or bidder intends to utilize DBE subcontractors, it must identify the subcontractors in its proposal or bid and set forth the percentage value of the work to be performed by the subcontractors utilizing the "Designation of Subcontractors" and "Designation of DBE Subcontractors" forms which are included with each invitation for bids or request for proposals, as appropriate.

In the event that Foothill Transit has established a DBE goal for a contract, each proposer or bidder must, prior to contract award, document that it has obtained sufficient DBE participation to meet the contract's goal or document that it has made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. In instances in which DBE subcontractors are utilized to meet a contract goal, a successful proposer will be required to submit documentation with its initial proposal as a matter of responsibility and a bidder will be required to submit documentation with its sealed bid as a matter of responsiveness. In addition to the information on the "Designation of DBE Subcontractors" form, this documentation must include (1) written documentation of the proposer's or bidder's commitment to use identified DBEs; and (2) written confirmation from the DBE that it is participating in the contract.

d. Good Faith Efforts

When a proposer or bidder indicates that it cannot meet a contract goal, its submitted documentation must also include evidence of good faith efforts undertaken by the proposer or bidder to achieve DBE participation sufficient to meet the goal. For purposes of determining the adequacy of those efforts Foothill Transit shall be guided by Appendix A to 49 C.F.R. Part 26.

e. Tracking Participation

Foothill Transit shall require contractors to submit monthly reports identifying payments made to DBE firms.

3. Cooperative Procurement

When circumstances warrant, Foothill Transit may attempt to fill requirements through a cooperative purchasing agreement with the State of California, the County of Los Angeles, or with other appropriate public agencies.

4. Open Competition Required

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business.
- b. Unnecessary experience and excessive bonding requirements.
- c. Noncompetitive pricing practices between firms or between affiliated companies.
- d. Noncompetitive award to any person or firm on retainer contracts.
- e. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered.
- f. Exclusionary or discriminatory specifications.
- g. Any arbitrary action in the procurement process.

For each procurement, the Director of Procurement will prepare a memorandum indicating that the level of experience and bonding required for each contract is appropriate for the contract is question, and justifying the experience and bonding requirements for the contract. The Director of Procurement will ensure that memorandum is included in the procurement file. In addition, the Director of Procurement will monitor each procurement and document all of the steps taken during the procurement to ensure that there are no arbitrary actions taken during the procurement process, and that each solicitation document includes all requirements expected of bidders or offerors.

5. Efficient and Economic Purchases

The Director of Procurement will review all proposed procurements to ensure that there are no purchases of unnecessary or duplicative items; and to determine whether it is necessary and/or appropriate to consider consolidating or breaking out procurements to obtain more economical purchases. The Director of Procurement will, in consultation with the Director of Finance, examine major procurements to determine if it is in Foothill Transit's best interest to enter into a capital lease rather than to make a purchase

6. Public Records Act

All bids and proposals received become the exclusive property of Foothill Transit. At such time as a contract award is approved or recommended for approval to the Executive Board, all bids and proposals become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" OR "PROPRIETARY." Foothill Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

7. Term Limitations—Rolling Stock Procurements

The Director of Procurement will ensure that the term of rolling stock procurements, including the exercise of options, funded with Federal funds will not exceed five (5) years.

8. Revenue Contracts

With the exception of lease agreements for certain portions of its Administrative Headquarters Facility, Foothill Transit does not enter into any revenue producing contracts. Contracts with local municipalities, wherein, Foothill Transit is reimbursed for goods and/or services provided are not considered revenue contracts.

9.. Escrow/Surety Deposits

When it becomes necessary for Foothill Transit to place funds in excess of \$500,000 into an escrow account or other form of performance security for the purchase of land, buildings and other major assets, Foothill Transit will require the agency holding and or requesting these funds to guarantee interest earning at a minimum rate equal to 80% of the current LAIF rate. In the event this rate cannot be guaranteed Foothill Transit will: 1) guarantee payment within four working days from the day the funds are requested. In the event Foothill Transit fails to fulfill this guarantee, Foothill Transit will compensate all related parties to the transaction for actual costs incurred because payment was received after the four working days; 2) Secure a certificate of deposit (CD) in Foothill Transit's name in the amount of the required escrow/security deposit and surrender the CD to the agency requiring the deposit; or 3) Select aan escrow agent that will guarantee Foothill Transit an interest earning rate that is acceptable based on the terms and conditions at the time of the purchase. It will be at Foothill Transit's option to select option 1, 2, or 3.

D. Procurement History

An accurate account of each procurement will be maintained by the Procurement Department and the Director of Procurement will ensure that it is included in the official procurement file. A record of procurement actions, i.e. Procurement History, will be initiated for all Invitation for Bids, Request for Proposals, and Sole Source procurements. Procurement history documentation will be updated as a procurement progresses and will be retained as a historical record of the procurement. Procurement history includes, but is not limited to:

1. Rationale for the Method of Procurement

The type of procurement to be used for a given project will be determined at the outset of the project through consultation between the Project Manager and the Director of Procurement. . A written justification for the procurement type selected will be developed including a completed "Method of Procurement Matrix" (see Chapter III, Subchapter F of the Policies and Procedures).

2. Contract Type

The rationale for selecting the type of contract, fixed price or cost reimbursement, will be developed by the Project Manager, Director of Procurement and legal counsel, and will be recorded by the Director of Procurement.

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3. Contractor Selection

Reasons for contractor selection or rejection will be fully documented, including, but not limited to, evaluation criteria, responsiveness to the requirements of the solicitation, responsibility, or cost. The Director of Procurement will fully document the selection process.

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4. Cost or Price Evaluation

The cost of potential contracts will be evaluated and documented by the Project Manager, and compared to the Independent Cost Estimate required under Chapter III, Subchapter N. The Director of Procurement will ensure that a cost or price analysis as required under Chapter III, Subchapter O is completed. The Director of Procurement will ensure that appropriate documentation is included in the procurement file.

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CHAPTER III – PROCUREMENT PROCEDURES

Subchapter A - Procurement by Micro-Purchases

A micro purchase is a procurement for goods or services (excluding public works projects) that total \$5,000 or less, (\$3,000 or less when Federal Funds are used). Purchases below \$5,000,(\$3,000 or less when Federal Funds are used) shall be made without obtaining competitive quotations if it is determined by the Department Director that the price is fair and reasonable. The splitting of procurements to avoid competition is prohibited, and the Director of Procurement will review all micro purchases to ensure that prohibited splitting of procurements has not taken place. The Department Director will document how this determination was derived on the Purchase Order, if a Purchase Order is required. Micro-purchases must be distributed equitably among qualified suppliers.

Subchapter B - Small Purchases

For procurements between \$5,000 and \$20,000,(\$3,000 to \$20,000 when Federal Funds are used) (public works construction projects valued at \$6,500 or less can be procured through the small purchase process), written quotations from three (3) vendors are required. Oral quotes will be accepted with written confirmation required. The responsibility for soliciting quotations rests with the Department Director. Appropriate documentation, including a list of the vendors contacted, the quotes received, and a statement by the Department Director that a determination has been made by the Department Director that the price is fair and reasonable shall be included with the Purchase Order. If the lowest bidder is not chosen, the documentation will include justification for the selection of other than the lowest bidder.

Subchapter C - Invitation for Bids (IFB)

A. General

The Invitation for Bids (IFB) competitive procurement process is used for public works/construction projects, and, if appropriate, purchases of goods and services whose cumulative value will exceed \$20,000. The IFB process is coordinated by the Director of Procurement.

B. Use

The IFB method of procurement is employed when all of the following apply:

1. A clear and accurate description of the technical requirements for the material, product, or service to be procured is available in a manner that provides for full and open competition.
2. Two or more responsible suppliers are willing and able to compete effectively for the contract.
3. The procurement lends itself to a firm, fixed-price contract. A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.
4. Selection of the successful bidder can be made on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.
5. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary because award of the contract will be made based on price and price-related factors alone.

C. Scope of Work and Specifications

The Project Manager shall provide the Director of Procurement with the ~~s~~Scope of ~~w~~ork and specifications for each ~~the~~ solicitation. The following general rules apply to scopes of work and specifications:

1. A common basis for bidding must be provided. Specifications and scopes of work should set out the minimum essential characteristics and

standards of the items or services to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.

2. Specifications and scopes of work should not call for features or quality levels which are not necessary to meet the bid requirements.
3. All optional items should be identified by the Project Manager, and the solicitation documents should set forth the expected needs and the manner in which the related bid prices will be considered.
4. In order to foster free and open competition, specifications may not require a "brand name" product without allowing an "or equal" product to be offered. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the goods or services required, a "brand name or equal" description may be used to define the performance or other salient characteristics of the goods or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" bid must be clearly stated.
5. Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, federal, state and local government specifications and requirements.

D. Issuance of IFB

For any project that is estimated to cost over \$100,000, the Executive Board must approve the issuance of an Invitation for Bids (IFB). The Director of Procurement shall prepare the Board Report seeking approval of the issuance of the IFB. All IFBs will be prepared by the Director of Procurement, will be advertised on Foothill Transit's web-site, and, must be published in a newspaper of general circulation, including, but not limited to trade publications, in sufficient time prior to the date set for bid closing. The notice must include the following minimum information:

1. A general description of the services or goods to be purchased.
2. Where to receive an IFB.
3. The location, day and time of the Pre-Bid Conference (If one is scheduled).
4. The location, last day and hour bids will be accepted (deadline).
5. Bid Acceptance Period.

6. Whether Federal funds are being used for the procurement.

E. IFB Packet

The Director of Procurement will coordinate the release of the IFB packet. The IFB packet will include the following:

1. Instructions To Bidders – General instructions concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information.
2. Submittal Documents – Required forms to be complete by the bidder and submitted with the bid.
3. Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidders to properly respond to the IFB.
4. General Terms and Conditions.
5. Special Terms and Conditions – Provisions unique to each IFB, if applicable, will be included (e.g., special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payments procedures).

F. Control Record

1. A control record will be maintained by the Director of Procurement as IFB packets are distributed to prospective bidders. The control record profiles the following information:
 - a. Date and time IFB packets are distributed.
 - b. Names and addresses of bidders receiving bid invitations and attending pre-bid conferences.
2. The control record has two primary purposes:
 - a. Serves as a mailing list for the issuance of addenda.
 - b. Provides a record for verification in cases of vendor protests and other issues.

G. Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Unless otherwise specified in the IFB documents, attendance by potential bidders is not mandatory. Minutes of the conference and the list of attendees will be issued to prospective bidders.

The pre-bid conference shall be chaired by the Director of Procurement, and shall follow the format below:

1. Discussion on basic requirements such as instructions to the bidders, funding, contract type, and specific points that should be addressed in each proposal.
2. Discussion on the participation requirements for disadvantaged business enterprises (DBE) if applicable.
3. Discussion on the scope of work and have the Project Manager available to answer technical questions.
4. Provide project schedule.

H. Addendum to Invitation for Bids

If after issuance of an IFB, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, opening dates, etc., or to correct or clarify a defective or ambiguous IFB, such changes shall be accomplished by the issuance, in writing, of an addendum to the IFB. Before issuing an addendum to an IFB, the period of time remaining until the time set for bid submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective bidders of an extension of time by email, facsimile or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective bidder to whom the IFB was furnished or to any prospective bidder who attended any site visit and/or pre-bid conference and shall provide:

1. Addendum number and date.
2. Number, date and the title of the IFB concerned.
3. Clearly stated changes made in the IFB and the extension of the opening date, if applicable.

4. Instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge and return the addendum.

I. Cancellation of IFB

Invitations for bids shall not be canceled unless cancellation is clearly in Foothill Transit's interest (i.e., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any further requirements for the type of material or service involved.

If the invitation for bids is canceled before the time for bid openings, this fact shall be recorded in the control file, with a statement of the number of entities invited to bid and the number of bids received.

J. Receipt of Bids

Bids shall be submitted so as to be received at the location designated in the invitation for bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at Foothill Transit's offices is the time/date stamp of Foothill Transit, which shall be placed on the bid wrapper immediately upon receipt. The Foothill Transit staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

K. Withdrawal of Bids

Any bidder may withdraw their bid, either personally or by written request, received by Foothill Transit, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for the time period specifically set forth in each invitation for bids.

L. Bid Opening

Upon receiving the bids, it is the Director of Procurement's responsibility to record their receipt and keep them unopened and secure, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to Foothill Transit representatives who have a proper need for such information, as determined by the Director of Procurement.

Unidentified bids may be opened solely for the purpose of identification and then only by the Director of Procurement. If a sealed bid is opened by mistake or for purposes of identification, the Director of Procurement shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Director of Procurement shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the Director of Procurement to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read.

A second Foothill Transit representative shall be present to witness the opening and reading of the bids and, along with the Director of Procurement, shall sign the recording document to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

The original bid form shall not be allowed to pass out of the hands of the Director of Procurement. The original bids may not be removed from the office except for official review and evaluation by Foothill Transit legal counsel. A copy of each bid must be maintained in Foothill Transit's procurement files in lieu of such originals for the interim period.

All bids will be open to public review after award has been made. All bids, including attachments and envelopes, shall be retained for the official files.

M. Recording of Bids

The invitation for bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered on the official Foothill Transit record and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. The Director of Procurement shall be responsible for maintaining files of these records and abstracts.

The file of the invitation for bids shall show the distribution that was made and the date thereof. The names and addresses of prospective bidders requesting the invitation for bids who were not included on the original solicitation list shall be added and made a part of the record.

N. Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation for Bids. Award shall be made to the bidder submitting the lowest bid, unless Foothill Transit determines that the bid is not responsive and/or the bidder is found to be not responsible.

O. Mistakes in Bids

1. General. Technicalities or minor irregularities in bids are waived if the Director of Procurement determines that it shall be in Foothill Transit's best interest. The Director of Procurement shall either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to Foothill Transit's advantage to do so.
2. Mathematical Errors. Errors in extension of unit prices or in mathematical calculations shall be corrected by Foothill Transit prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.
3. Mistakes Discovered Before Opening. A bidder can correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set forth for bid opening.
4. Confirmation of Bid. If the Director of Procurement knows or has reason to conclude that a mistake has been made, the bidder shall be requested

to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid, or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid will be corrected or withdrawn if any of the following conditions are met:

- a. If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- b. A bidder will be permitted to withdraw a low bid if:
 - i. A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - ii. The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.
- c. Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Director of Procurement shall prepare a determination showing that the relief was granted or denied.

P. Minor Irregularities in Bids

1. A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement will be made if it would not be prejudicial to other bidders.
2. A defect or variation in a bid is considered immaterial and inconsequential when its significance as to price, quantity, quality or delivery is trivial.
3. The Director of Procurement shall either give the bidder an opportunity to cure any deficiency resulting from minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of Foothill Transit.

Q. Multiple or Alternate Bids

Unless multiple or alternate bids are requested in the solicitation, these bids will not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder.

These provisions shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

R. Analysis of Limited Bid Response

If less than three bids have been received, the Director of Procurement may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising. A price or cost analysis may be performed to establish the reasonableness of the bid price before an award is made.

S. Determination of Responsiveness

1. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
2. A bid shall be rejected when the bidder imposes conditions, which modify requirements of the invitation for bids. Bids may be rejected in cases, including but not limited to those in which the bidder:
 - a. Attempts to protect itself against future changes in conditions such as increased costs, if a total price to Foothill Transit cannot be determined for bid evaluation.
 - b. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."
 - c. States a price but qualifies such price as being subject to "price in effect at time of delivery".
 - d. Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
 - e. Limits rights of Foothill Transit under any contract clause.
 - f. Fails to comply with all of the requirements of the IFB.
 - g. Fails to furnish a bid bond in accordance with the requirement of the invitation for bids.

3. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.
4. After submitting a bid, if a bidder transfers all of his assets or the part of his assets related to the bid during the period between the bid opening and the award, Foothill Transit may accept or reject the bid at its sole discretion.

T. Responsible Bidder Evaluation

1. Before awarding the contract, Foothill Transit shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:
 - a. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
 - b. Has a satisfactory record of integrity and business ethics.
 - c. Is neither debarred nor suspended from State or Federal programs.
 - d. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
 - e. Is in compliance with applicable licensing and tax laws and regulations.
 - f. Has a satisfactory record of performance. The contractor must have sufficient key personnel with adequate experience, a parent firm (if appropriate) with adequate resources and experience, and key subcontractors with adequate experience and past performance. The contractor must have sufficient past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in Foothill Transit's solicitation. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered is presumed to be non-responsible. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.

- g. Is otherwise qualified and eligible to receive an award under applicable laws and regulations. In addition, the contractor's integrity and compliance with public policy will be examined.
 - h. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
 - i. Has the necessary production, construction, and technical resources, equipment and facilities, or the ability to obtain them.
- 2. Evaluation of the responsibility of prospective contractors may be made based upon the following sources:
 - a. A list of debarred, suspended or ineligible firms or individuals. The Excluded Parties List System (EPLS) will be examined to determine if a prospective contractor has been debarred or suspended.
 - b. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
 - c. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
 - d. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
 - e. Documented past performance on contracts with Foothill Transit.
 - f. , Appropriate websites containing information concerning the responsibility of prospective contractors.
 - g. If appropriate, it will be determined, through utilization of the California State Licensing Board website, whether a prospective contractor possesses required licenses.
 - h. If appropriate, prospective contractors will be required to provide financial information to determine if the contractor has financial resources adequate to perform the contract, or the ability to obtain them.

- i. The past performance of prospective contractors will be checked by contacting references using a list of standard questions, and responses will be documented.
- j. In certain cases, such as bus procurements, site visits will be conducted to validate the manufacturing capabilities of the prospective contractor.

3. The Director of Procurement in consultation with the Project Manager will be responsible for preparing the responsibility findings and will ensure that documentation of the findings is included in the procurement file.

4. The Director of Procurement will ensure that no contract is recommended for award nor executed until the contractor has been determined to be responsible,.

5. The Director of Procurement will ensure that the template set forth as an appendix to this section is utilized and completed by the Project Managers for each procurement action undertaken by Foothill Transit. The Director of Procurement will also ensure that the completed template is included in the procurement file.

U. Rejection of All Bids

- 1. Any time prior to the bid opening date and time, Foothill Transit may cancel or postpone the bid opening, or cancel the IFB in its entirety.
- 2. Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.
- 3. Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.
- 4. As a general rule, after opening, an invitation for bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the invitation for bids and the additional quantity should be treated as a new procurement.
- 5. Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal and State procurement regulations. A written determination must be included in the invitation for

bid file stating that cancellation is in the best interest of Foothill Transit for reasons such as the following:

- a. Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.
 - b. The supplies or services are no longer required.
 - c. The invitation for bids did not provide for consideration of all factors of cost to Foothill Transit.
 - d. Bids received indicate that the needs of Foothill Transit can be satisfied by a less expensive item differing from that on which bids were received.
 - e. All otherwise acceptable bids received are at unreasonable prices.
 - f. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to Foothill Transit's legal counsel.
 - g. The bids received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.
6. When it is determined to reject all bids, Foothill Transit shall notify each bidder that all bids have been rejected and state the reason for such action.

V. Rejection of Individual Bids

1. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
2. A bid shall be rejected where the bidder imposes conditions which modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:
 - a. Attempts to protect himself against future changes in conditions such as increased costs, if a total price to Foothill Transit cannot be determined for bid evaluation.
 - b. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."

- c. States a price but qualifies such price as being subject to "price in effect at time of delivery".
- d. Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
- e. Limits rights of Foothill Transit under any contract clause.
- f. Fails to comply with all of the requirements of the IFB.
- g. Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.
- h. Low bids received from firms determined to be not responsible pursuant to Federal or State procurement regulations shall be rejected in accordance with the procedures set forth in this Chapter.
- i. A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.
- j. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.
- k. After submitting a bid, if a bidder transfers all of his assets or that part of his assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus Foothill Transit may reject the bid.

W. Award of the Contract

Unless all bids are rejected, award shall be by written notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by Foothill Transit of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform the contract.

Notice of award shall be made by over-night delivery, email, or facsimile to the successful bidder. In addition, Foothill Transit will notify all unsuccessful bidders of its intent to award a contract to the successful bidder at the same time it notifies the successful bidder if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required. Notification to unsuccessful bidders will be made by over-night delivery, email, or facsimile.

X. Final Award

If Executive Board approval is required for the selection of the contractor, the Director of Procurement and the Project Manager will prepare the board report that identifies all bidders responding to the IFB, and describes the procurement and bid evaluation processes. The board report should describe the services or goods being procured.

The contract will be drafted by legal counsel. The Director of Procurement will ensure that the contract is executed at the approval level required in these procedures.

Five original signed copies of each contract will be executed by Foothill Transit and the contractor. The Director of Procurement will maintain one original of the contract for the procurement file and distribute one original to each of the following: legal counsel; Foothill Transit's Central Files; the contractor; and the Project Manager.

Y. Project Completion

All original documentation related to each procurement such as the IFB, Bid, control record, board report, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the Director of Procurement for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Subchapter D - Request for Proposals (RFP)

A. General

The Request for Proposals (RFP) process is used in the procurement of ~~architectural and engineering~~ services (see Section E, subsection c, item iii for ~~the special procurement of architectural and engineering services for A/E services~~) or and when conditions are not appropriate for the use of an IFB. The latter is generally the case when the goods or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present. RFPs are generally used for the purchase of services such as lease agreements, maintenance and service contracts, rental contracts and professional service contracts. The RFP process is coordinated by the Director of Procurement.

B. RFP Contents

The RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror. An RFP generally includes:

1. Project background.
2. Purpose of the engagement.
3. General firm qualifications desired.
4. Scope of work.
5. Project schedule.
6. Proposal requirements.
7. Criteria for selection.
8. Payment terms.

C. Issuance of RFP

For any project that is estimated to cost over \$100,000, the Executive Board must approve the issuance of a Request for Proposals (RFP). The Director of Procurement shall prepare the Board Report seeking approval of the issuance of the RFP. All RFPs will be prepared by the Director of Procurement, will be advertised on Foothill Transit's web-site, and, must be published in a newspaper of general circulation, including, but not limited to trade publications, in sufficient time prior to the date set for receipt of proposals. The Director of Procurement

will ensure that the RFP is made available to an adequate number of qualified sources to ensure fair and open competition. The notice must include the following minimum information:

1. A general description of the services or goods to be purchased.
2. Where to receive an RFP.
3. The location, day and time of the Pre-Proposal Conference (If one is held).
4. The location, last day and hour proposals will be accepted (deadline).
5. Whether Federal funds are being used for the procurement.

D. RFP Packet

The Director of Procurement will coordinate the release of the RFP packet. The RFP packet will include the following:

1. Instructions To Proposers-General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.
2. Attachments- Required forms to be completed by the proposer and submitted with the proposal.
3. Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP.
4. Scope of Work- Each RFP will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of Foothill Transit, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:
 - a. The specific objectives of the proposed work.
 - b. A detailed description of the work to be performed outlining various tasks or phases of work, and defining the limits of the proposed project.
 - c. A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services.
 - d. A proposed delivery schedule.
 - e. A proposed contract period.

E. Control Record

1. A control record will be maintained by the Director of Procurement as RFP packets are distributed to prospective bidders. The control record profiles the following information:
 - a. Date and time RFP packets are distributed.
 - b. Names and addresses of vendors receiving the RFP and attending the pre-proposal conference.
2. The control record has two primary purposes:
 - a. Serves as a mailing list for the issuance of addenda.
 - b. Provides a record for verification in cases of vendor protests and other issues.

F. Pre-Proposal Conference

1. A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous RFP. Unless otherwise stated in RFP documents, attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers.
2. The pre-proposal conference shall be chaired by the Director of Procurement, and shall follow the format below:
 - a. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal.
 - b. Discuss the participation requirements for disadvantaged business enterprises (DBE) if applicable.
 - c. Discuss the scope of work and have the Project Manager available to answer technical questions.
 - d. Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

G. Addendato Requests for Proposals

1. If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP such changes shall be accomplished by issuance, in writing, of an amendment to the RFP. Before issuing an amendment to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by email, facsimile or telephone. Such notification should be confirmed in the amendment. The amendment shall be sent to each prospective proposer to whom the RFP was furnished or who attended any site visit and/or pre-proposal conference.
2. Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if such information is necessary to proposers in submitting proposals on the request or if the lack of such information would be prejudicial to uninformed proposers. No award shall be made on the request unless such amendment has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.
3. The RFP will indicate that Foothill Transit is not bound by any oral representations, clarifications, or changes made in the written specification by Foothill Transit's employees, unless such clarification or change is provided to potential proposers in written addendum form from Foothill Transit.
4. Each addendum issued to a request for proposals shall:
 - a. Be serially numbered and dated.
 - b. Include the number, date and a description of the original RFP concerned.
 - c. Clearly state the changes made in the RFP and the extension of the due date, if any.
 - d. Include instructions to proposers for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

H. Cancellation of RFP

RFPs shall not be canceled unless cancellation is clearly in Foothill Transit's interest (i.e., where there is no longer a requirement for the service, or where amendments to the RFP would be of such magnitude that a new RFP is desirable). When an RFP is canceled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom requests for proposals were issued.

The notice of cancellation shall identify the RFP number; briefly explain the reason the RFP is being canceled; and, where appropriate, assure prospective proposers that they will be given an opportunity to propose on any re-solicitation or any further requirements for the type of service involved.

I. Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at Foothill Transit's offices is the time/date stamp of Foothill Transit which shall be placed on the proposal wrapper immediately upon receipt. The Foothill Transit staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

J. Withdrawal of Proposals

Any proposer may withdraw their proposal, either personally or by written request, received by Foothill Transit at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of proposers in preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

K. Format of Proposal

The response to each RFP must be made in accordance with the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

L. Evaluation of Proposals

1. Each RFP will contain the Evaluation Criteria that will be used by Foothill Transit in evaluating proposals. These criteria are set forth in the RFP in order of their relative importance, with the most important being listed first. To reflect this, each criterion will either be scored using an equal score range (equal weighing) or each criterion will be assigned a weight. If a weight is assigned, each score will be multiplied by the weight to produce a final criterion score. Price is always included as an evaluation criterion, with the exception of architectural and engineering services. Price will be evaluated by giving the lowest-price proposal the full number of points assigned to the price criteria and computing the number of points for the other proposals in accordance with their relationship to the lowest price--the lowest price is divided by the price of the proposer whose price is being evaluated, and then the quotient resulting from the foregoing calculation is multiplied by the number of points assigned to the price factor to determine the price score of the proposer whose price is being evaluated. This calculation is done for each proposal being evaluated. The price scores are then added to the scores for other factors to determine the highest over-all score. The RFP will clearly indicate how price will be evaluated. Only criteria set forth in the RFP may be used to evaluate the proposal.
2. If the RFP sets forth "Minimum Requirements Criteria", a "pass/fail" evaluation will be made of the proposal to determine compliance with the "Minimum Requirements Criteria.". Failure in any one of the "pass/fail" criteria may be cause for disqualifying the entire proposal from further review. However, Foothill Transit's evaluation may, in Foothill Transit's discretion, be augmented by verbal or written requests to proposers for clarification, or additional information as necessary to determine if the "Minimum Requirements Criteria" have been met. The determination to disqualify a proposal shall be solely at the discretion of Foothill Transit
3. Proposals which "pass" the "pass/fail" test are evaluated using the procedures set forth in this section.
 - a. An evaluation committee for each RFP will be recommended by the Director of Procurement in consultation with the Project Manager and appointed by the Executive Director. In appointing individuals to a Committee, the Executive Director will consider the nature of the procurement, and the appropriate expertise of the individuals appointed to the Committee.
 - b. A date and time for an evaluation meeting will be set.

- c. Members of the Evaluation Committee shall be familiar with the content of the RFP. Any questions on the RFP, or documentation furnished by an offeror should be addressed to the Director of Procurement prior to initiation of evaluations.
 - d. The Evaluation Committee shall first perform a technical evaluation of each offeror's proposal using the evaluation score sheets provided by the Director of Procurement.
- 4. Upon compilation of the Evaluation Committee's initial scores, the Director of Procurement shall review the scores and make a determination as to which offerors are in the competitive range for purposes of conducting discussions with the proposers.
- 5. The competitive range shall be determined on the basis of cost or price and other factors that are stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. If discussions are conducted with one offeror, discussions must be conducted with all offerors within the competitive range.
- 6. Discussion after receipt of initial proposals is not required in the following cases:
 - a. Procurement is for supplies for which prices or rates are fixed by law or regulation;
 - b. Time for delivery will not permit discussions; or,
 - c. The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.

M. Discussions

- 1. The Evaluation Committee shall conduct oral discussions with all responsible offerors who submit proposals within the competitive range, as determined in subsection L. During the discussion phase of the source selection process, all communication is coordinated through the Director of Procurement.
- 2. The discussion process is governed by the following general guidelines.
 - a. Notify all proposers regarding their status and arrange a meeting with the offerors who have been determined to be within the competitive range.

- b. Verbally at the meeting and in written form advise offerors of deficiencies in their proposals so that the offerors are given an opportunity to satisfy Foothill Transit's requirements.
 - c. Attempt to resolve any uncertainties concerning the technical proposals and other terms and conditions of the proposal.
 - d. Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process.
 - e. Provide the offeror a reasonable opportunity to submit any cost or price, technical or other revisions to its proposal that may result from the discussion.
3. During the discussion the Evaluation Committee should not engage in:
- a. Technical leveling, defined as helping an offeror bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal.
 - b. Technical transfusion, defined as disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal.
 - c. Auction techniques, such as:
 - i. Indicating to an offeror the cost or price that it must meet to obtain further consideration.
 - ii. Advising an offeror of its price standing relative to another offeror; however, it is permissible to inform an offeror that its cost or price is considered by the Evaluation Committee to be too high or unrealistic.
 - iii. Otherwise furnishing information about other offeror's prices.

N. Request for Best and Final Offer

- 1. Upon completion of discussions, Foothill Transit may make a selection for contract award without requesting Best and Final Offers or may issue to all proposers within the competitive range a request for a final supplement denominated the "Best and Final Offer" (BAFO). Oral requests for best and final offers shall be confirmed in writing. Best and Final Offers must

be submitted in accordance with written procedures received from Foothill Transit.

2. Such requests shall advise offerors:
 - a. That negotiations are being concluded.
 - b. That offerors are being asked for their "best and final" offer, not merely to confirm or reconfirm prior offers.
 - c. That any revision or modification of proposals must be submitted by the date specified.
3. Following the review of the BAFOs by the Evaluation Committee, the Director of Procurement shall consolidate the cost and technical evaluations and all score sheets along with their comments and recommendations. After reviewing the evaluations and recommendation made by the Evaluation Committee, the Executive Director shall make a determination of the recommendation for contract award.

O. Debriefing of Unsuccessful Proposers

1. When a contract is to be awarded on some basis other than price alone, unsuccessful proposers shall be debriefed upon their written request submitted to the Director of Procurement within a reasonable time. Debriefings shall be provided at the earliest time after the Director of Procurement makes a final determination recommending the award of the contract. The debriefing shall be conducted by the Director of Procurement and may be either oral or written as the Director of Procurement determines appropriate.
2. The debriefing shall:
 - a. Be limited to discussion of the unsuccessful proposer's proposal and must not include specific discussion of a competing proposer's proposal.
 - b. Be factual and consistent with the evaluation of the unsuccessful proposer's proposal; and
 - c. Provide information on areas in which the unsuccessful proposer's technical proposal was deemed weak or deficient.

P. Award of the Contract

After evaluation of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal most advantageous to Foothill Transit, price and other factors considered.

Notice of award shall be made by over-night delivery, email, or facsimile to the successful proposer. In addition, Foothill Transit will notify all unsuccessful proposers of its intent to award a contract to the successful proposer at the same time it notifies the successful proposer if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required. Notification to unsuccessful proposers will be made by over-night delivery, email, or facsimile. If the Executive Board does not accept the Executive Director's recommendation as to the successful proposer, the Executive Board may: (1) choose another proposer using the same criteria set forth in the RFP; or (2) direct re-solicitation of proposals.

Q. Final Award

If Executive Board approval is required for selection of the successful proposer, the Director of Procurement and the Project Manager will prepare the board report that identifies all individuals or firms responding to the RFP, describes the procurement and evaluation processes, and sets forth the evaluation scores for each proposer. The board report should describe the services or goods being procured.

The contract will be drafted by legal counsel who will ensure that the contract will not include any terms or conditions to be negotiated in the future. The Director of Procurement will ensure that any contract addressing such terms and/or conditions will not be executed. The Director of Procurement will ensure that the contract is executed at the approval level required in these procedures.

Five original signed copies of each contract will be executed by Foothill Transit and the contractor. The Director of Procurement will maintain one original of the contract for the procurement file and distribute one original to each of the following: legal counsel; Foothill Transit's Central Files); the contractor; and the Project Manager.

R. Project Completion

All original documentation related to each procurement such as the RFP, successful proposal, BAFO, control record, board report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the Director of Procurement for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the

project is closed out and completed unless a different time period is mandated by a funding entity.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis.

Subchapter E - Special Procedures for Architectural/Engineering Services

- A. Special procedures will be used for competitive negotiation procedures for qualifications-based procurement of architectural and engineering ("A/E" hereafter) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. An RFP is used in the solicitation of A/E and related services.
- B. Following this method, each proposer's qualifications are evaluated and the most qualified proposer is selected subject to negotiation of fair and reasonable compensation. Under this method, Foothill Transit may not consider price as an evaluation factor in determining the most qualified proposer. Negotiation is conducted with only the most qualified proposer. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified proposer, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even though firms that provide the above types of services are also potential sources to perform other services.
- C. Refer to the RFP procedures above for all pre-evaluation activities. The steps to be used for proposal evaluation and contract negotiation for A/E and related services solicitations are as follows:
 - 1. An evaluation committee will be recommended by the Director of Procurement in consultation with the Project Manager and appointed by the Executive Director to review eligible firms and all responses to RFP.
 - 2. Team evaluates the firms based on:
 - a. Professional qualifications for performance of the required services;
 - b. Specialized experience and technical competence in the type work required;
 - c. Capacity to accomplish the work in the required time; and,
 - d. Past performance in terms of cost control, quality of work and compliance with performance schedules.
 - 3. Evaluation team holds discussions with the most highly qualified firms ("short list").
 - 4. Evaluation team prepares a selection report for the Executive Director recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the Executive Director to review the basis upon which the recommendations were made. The Executive Director shall not add firms

to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the Executive Director shall document the reasons therefore and return the report to the evaluation team for appropriate revision.

5. The final selection shall be made by the Executive Director from a list of the most highly qualified firms prepared by the evaluation team. The Executive Director will list those firms in order of preference for negotiating a contract.
6. After the final selection has taken place, Foothill Transit may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, Foothill Transit may release information that negotiations will take place with the next highest rated firm.
7. The final selection authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.
8. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.
9. In determining the amount of compensation and the method of payment, consideration shall be given to:
 - a. Scope and complexity of designs, surveys and other work and the skills necessary for these services.
 - b. Quality and quantity of data provided to the A/E by Foothill Transit.
 - c. Location of, and conditions under which, the services will be performed.
 - d. Date services to begin and time allowed for performance.
10. Costs should be negotiated taking into consideration:
 - a. Direct Labor.
 - b. Overhead.
 - c. General and administrative expenses.
 - d. Materials.
 - e. Other direct costs.
 - f. Profit, which is further influenced by:

- i. Degree of A/E's risk.
 - ii. Level of effort.
 - iii. Level of talent or expertise the A/E must furnish.
 - iv. Amount of subcontracting.
 - v. Amount of top level A/E management involved.
 - vi. Subcontracts.
 - vii. Contractor's investment.
- 11. When the contract is negotiated and signed, the negotiations are documented and placed in the file.
 - 12. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract.
 - 13. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to Foothill Transit for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

Subchapter F -Sole Source Procurements

A. Sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. The Director of Procurement will ensure that the template set forth in the Appendix to this Subchapter is utilized by the Project Manager in evaluating a potential sole source procurement and in making a recommendation that a sole source procurement be utilized by Foothill Transit. The Project Manager must fully document the grounds for the sole source procurement, and the Director of Procurement will ensure that the justification is provided to the Executive Director of Executive Board for approval as appropriate. The Director of Procurement will also ensure that the completed template is included in the procurement file. The written request for the approval of a sole source will be drafted by the originating director and routed through the Director of Procurement and legal counsel to the Executive Director or Executive Board for approval.

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B. The following areas must be considered in sole source determinations:

1. A contract amendment or change order that is not within the scope of the original contract is considered a sole-source procurement.
2. Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

a. Single Source

The item or services sought is available only from a single source and one of the following condition described below is present:

- i. Unique Capability or Availability. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Foothill Transit only from one source and has not in the past been available to Foothill Transit from another source.
- ii. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
- iii. Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result

in substantial duplication of costs that are not expected to be recovered through competition.

- iv. Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Foothill Transit's needs.
- b. Unusual and Compelling Urgency. Foothill Transit may limit the number of sources from which it solicits bids or proposals when it has such an unusual and urgent need for the property or services that it would be seriously injured unless it were permitted to limit the solicitation. Foothill Transit may limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.
- c. FTA Approval. The Federal Transit Administration authorizes noncompetitive negotiations.
- d. Inadequate Competition. After solicitation of a number of sources, competition is determined inadequate. If upon completion of a competitive procurement only one proposal is received, the Director of Procurement will review the specifications and determine if they were unduly restrictive or by contacting sources that chose not to submit a bid or proposal. If it is determined that the competition was inadequate, the procurement can proceed as a sole source.

C3. A cost analysis must be performed for each sole source procurement. see contracts where required. The purpose of the analysis is to provide sufficient information to support the conclusion that the price is fair and reasonable. The analysis will be prepared by the Project Manager and in consultation with the Director of Procurement. The Director of Procurement will ensure that no contracts will be executed until a fully detailed and documented analysis is completed, and made a part of the appropriate procurement file. The Director of Procurement will ensure that the template set forth in the Appendix to this Subchapter relating to cost analysis is utilized and completed by the Project Manager for each sole procurement action undertaken by Foothill Transit. The Director of Procurement will also ensure that that the completed template is included in the procurement file.

Subchapter G - Single Bid or Proposal

A single bid situation exists when only one bid has been received at the time and date set for bid opening; or only one responsive bid is received at the time and date set for bid opening (as a result of having only one responsive bidder and all other bidders being determined to be non-responsive). A single proposal situation exists when only one proposal has been received at the time and date set for submission of proposals, or it is determined after review of proposals received that only one proposal meets the criteria set forth in the request for proposals.

When only one bid or proposal is received in response to a solicitation that was issued to multiple sources, it must first be determined if there was adequate competition. The receipt of only one bid or proposal does not, in itself, mean that competition was inadequate. At a minimum, to determine if there was adequate competition, bidders/proposers who received solicitations, but did not bid/propose, will be contacted by the Director of Procurement and questioned to determine why they did not respond to the solicitation. Potential bidders/proposers will be specifically queried as to whether there were any elements in the procurement which may have restricted competition. The Director of Procurement will ensure that documentation reflecting the above process is included in the procurement file. Upon completion of the above process, the Director of Procurement will determine whether there were any elements in the procurement that may have restricted competition and will determine whether the procurement documents should be modified and the solicitation re-advertised or whether the procurement can go forward as originally advertised. If this is the case then the procurement is treated as a sole source, and it must be processed in accordance with the requirements for a sole source procurement set out in these Procedures.

Alternatively, the original solicitation can be cancelled, the requirements in the original solicitation can be changed to allow for more bids or proposals, and a new invitation for bids or request for proposals issued.

If the reason given by the non-responders are unrelated to the specification and/or solicitation terms, it will be presumed that competition was adequate and the award of the contract can be carried out as the result of a competitive procurement.

If the competition is deemed to be adequate, a price analysis must be performed to determine the reasonableness of the bid or proposal price. The Project Manager, in consultation with the Director of Procurement will prepare the price analysis. If, on the basis of a price analysis, it can be documented that the price is fair and reasonable, and if the bid is responsive and, as appropriate, the bidder or proposer is responsible, the contract may be awarded. If it ~~cannot~~cannot be determined that the bid or proposal price is reasonable, on the basis of a price analysis, the bidder or proposer will be requested to provide a detailed breakdown of costs and ~~profit~~profit. Foothill Transit will perform a cost analysis.

If competition is deemed to be inadequate, and it is determined appropriate to process the award as a sole source, a cost analysis must be performed unless the reasonableness of the price can be established based on a bidder or proposer's catalogue or market price.

Subchapter H - Emergency Procurements

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical Foothill Transit function or activity) will be handled immediately and expedited as required. The Director of Procurement has the authority to approve the purchase of all goods and services in emergency conditions. If the Director of Procurement is unavailable to authorize an emergency procurement, the Executive Director and/or the Deputy Executive Director may provide the necessary authorization. Upon completion of the emergency procurement, the Director of Procurement will document the actions taken and execute a proper requisition.

Subchapter I- Unsolicited Proposals

- A. An Unsolicited Proposal is a proposal that is:
1. Innovative and unique.
 2. Independently originated and developed by the offeror.
 3. Prepared without Foothill Transit's supervision, endorsement, direction, or direct involvement.
 4. Sufficiently detailed that its benefits in support of Foothill Transit's mission and responsibilities are apparent.
 5. Not an advance proposal for property or services that Foothill Transit could acquire through competitive methods.
 6. Not an offer responding to a published expression of need or request for proposals previously published by Foothill Transit.
- B. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, competition is required. To satisfy the requirement for full and open competition, the following actions must be taken before Foothill Transit enters into a contract resulting from an unsolicited proposal:
1. Publicize receipt of the unsolicited proposal.
 2. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.
 3. Publicize Foothill Transit's interest in acquiring the property or services described in the proposal.
 4. Provide an adequate opportunity for interested parties to comment or submit competing proposals.
 5. Publicize Foothill Transit's intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.
- C. If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, Foothill Transit may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property or services proposed.

Subchapter J - Amendments and Change Orders

- A. An amendment is any change to a contract that alters the terms and conditions of the original contract; or provides for a change in the scope or requirements of the original contract beyond what is specifically allowed by the original contract. Amendments are formal changes that must be approved at the same signature authority level as the original contract. A contract may not be amended to include a larger scope, greater quantities, or options beyond Foothill Transit's reasonably anticipated needs.
- B. Foothill Transit shall have the right, based on a clause contained in each contract to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be within the scope of the original contract and approved by Foothill Transit in advance of work being conducted by the contractor in accordance with the value of the change order or the calculated value of the time extension. In addition, Foothill Transit shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order. Change orders must be approved at the same signature authority level as the original contract. A change order is not permitted if the change causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work, so extensive, significant or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Such a change would be considered a "cardinal change" to the contract.
- C. All amendments ~~and change orders~~ shall be submitted to the Director of Procurement complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- D. Verification of Amendments ~~and Change Orders~~: The Director of Procurement will verify all amendments ~~and change orders~~ under the following procedures:
 - 1. The Project Manager and the Director of Procurement will review the proposed contract amendment ~~or change order~~ and determine whether it is within the scope of work for the project of the original contract. If the work under the amendment change is within the scope of work of the original contract, the Project Manager in consultation with the Director of Procurement will perform a cost analysis to determine if the price is fair and reasonable before recommending approval of the amending the change.

2. If the ~~amendment includes work that change~~ is not within the scope of work of the original contract, the ~~amendment contract change~~ will be treated as a sole-source procurement, and evaluated accordingly. Supporting documentation will be added to the procurement files.
3. The Director of Procurement and the Project Manager will ensure that the methods of calculating the amount of the amendment ~~or change order~~ are in conformance with the terms of the contract.
4. The issuance of change orders for each individual contract shall be monitored by the Director of Procurement.

Subchapter K - Use of an Existing Contract

- A. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto, and does not include State or local government purchasing schedules or purchasing contracts. The use of "tag-ons" (the addition of work, supplies, equipment or services) by Foothill Transit that is beyond the scope of the original contract is prohibited.
- B. Within the conditions set forth below, Foothill Transit is permitted to use existing contract rights held by another.
 - 1. Foothill Transit may use contract options held by another with the following limitations:
 - a. Foothill Transit must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
 - b. Foothill Transit may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
- C. Assignment of Contract Rights.
 - 1. Foothill Transit is required to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. Foothill Transit must be able to justify the quantities it procures.
 - 2. Foothill Transit may assign its contract rights to others if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions.

Subchapter L - Options

In awarding a contract that will include options, Foothill Transit will evaluate bids or offers for any option quantities or period contained in a solicitation if it intends to exercise those options after the contract is awarded. When an option is exercised, the Director of Procurement will ensure that the exercise of the option is in accordance with the terms of the original contract, and that a cost or price analysis is conducted as appropriate to determine if the option price is better than prices available in the market at the time that the option is to be exercised, or that the option price is more advantageous to Foothill Transit at the time that the option is exercised.

Option quantities, periods, and terms identified in a bid or proposal will be evaluated by the Project Manager or the Foothill Transit evaluation team at the time that the bid or proposal is evaluated and prior to the award of the base contract.

A record of the above actions will be documented in the procurement records.

Subchapter M - Intergovernmental and Joint Procurement Agreements

Foothill Transit can utilize available state and local intergovernmental agreements for the procurement or use of common goods and services. When obtaining goods or services in this manner when Federal funds are utilized, the Director of Procurement shall ensure that all federal requirements, required clauses, and certifications are properly followed and included in either the master intergovernmental contract or in Foothill Transit's purchase document.

Foothill Transit can jointly procure goods and services with other entities. When obtaining goods or services in this manner when Federal funds are utilized, the Director of Procurement shall ensure that federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

Subchapter N-Independent Cost Estimates

An Independent Cost Estimate is required for procurements over \$3,000 and for all contract amendments, whether the amendment requires an addition to or a deduction from the cost or price.

Comment [k1]: Added as recommended by 2011 ARRA PSR Review team.

A. Construction Projects

Construction cost estimates will be developed either directly by the A&E firm responsible for design development of the project or by a subcontractor of the firm. The estimates received will be dated and made part of the procurement documentation. The Director of Procurement will ensure that the estimates are prepared prior to the issuance of an invitation for bids.

1. The estimates will be made part of the procurement documentation and will be utilized and compared to the actual bids received to determine the reasonableness of the bids.
2. Following the receipt of bids, the Procurement Director, in consultation with the Project Manager and the A&E firm, will determine the reason for any bid prices that exceed the estimates, document the reason, and ensure that the documentation is included in the appropriate procurement file.

B. Non-Construction Projects

1. Cost estimates for non-construction projects will be developed by the Project Manager as part of the development of solicitation documents. The estimates will be made part of the procurement documentation and will be utilized and compared to the actual bids or price proposals received to determine the reasonableness of the bids or price proposals. At a minimum, the documentation will identify the source of information used to develop the estimate, the date that the estimate was made, and identify the individual preparing the estimate. The Director of Procurement will ensure that the estimates are prepared prior to the issuance of solicitation documents.
2. Following the receipt of bids or proposals, the Procurement Director, in consultation with the Project Manager, will determine the reason for any bid price or price proposals that exceed the estimates, document the reason, and ensure that the documentation is included in the appropriate procurement file.

C. Use of Standard Template

The Director of Procurement will ensure that the template set forth in the Appendix to this Subchapter is utilized and completed by the Project Manager for each

procurement action undertaken by Foothill Transit. The Director of Procurement will also ensure that that the completed template is included in the procurement file.

Subchapter O–Price or Cost Analysis

- A. In the event a single bid is received, a price or cost analysis shall be used to determine the reasonableness of the bid price. The purpose of the analysis is to provide sufficient information to support the conclusion that the price is fair and reasonable. The appropriate analysis will be prepared by the Project Manager, in consultation with the Director of Procurement. The Director of Procurement will ensure that no contracts will be executed until a fully detailed and documented analysis is completed, and made a part of the appropriate procurement file.
- B. The Project Manager, in consultation with the Director of Procurement may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.
- C. Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.
- D. Cost analysis is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.
- E. As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal and is used where Foothill Transit has less assurance of a fair and reasonable price.
- F. Price analysis may be accomplished through one or more of the following activities:
 - 1. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).
 - 2. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry.
 - 3. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to Foothill Transit with discount or rebate arrangements.

4. The comparison of proposed prices with estimates of cost independently developed by personnel within the Authority.
5. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

G. Cost analysis may be accomplished through the following:

1. Verify contractor's cost data.
2. Evaluate specific elements of costs and project these data to determine the effect on prices of such factors as:
 - a. The necessity for certain costs;
 - b. The reasonableness of amounts estimated for the necessary costs;
 - c. Allowances for contingencies; and
 - d. The basis used for allocations of particular overhead costs to the proposed contract.
3. When the necessary data is available, compare the contractor's estimated cost with:
 - a. Actual costs previously incurred by the contractor;
 - b. The contractor's last prior cost estimate for the same or similar estimates;
 - c. Current cost estimates from other possible sources; and
 - d. Prior estimates or historical costs of other contractors manufacturing the same or similar items.
4. Forecasting future trends in costs from historical experience:
 - a. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - b. In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

H. In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

1. Is the cost allowable in accordance with guidelines in Section 15 of the Federal Acquisition Regulations (FAR)?
2. Is the cost allocable to the particular project?; and,
3. Is the cost reasonable?

I. If only one bid or proposal is received, the sole bidder or proposer must cooperate with Foothill Transit as necessary in order for its bid or proposal to be considered for award. A new solicitation may be issued if the single bid or proposal price appears unreasonable or if no determination is made as to the reasonableness of the single bid or proposal price.

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J. The Director of Procurement will ensure that the template set forth in the Appendix to this Subchapter is utilized and completed by the Project Manager for each procurement action undertaken by Foothill Transit. The Director of Procurement will also ensure that that the completed template is included in the procurement file.

CHAPTER IV - PURCHASE ORDERS

A. ~~THIS SECTION IS CURRENTLY BEING REVISED~~ Purchase Order Process / Requirements

1. Purchase Orders can be issued for the purchase of good and or services. The issuance of a purchase order requires the approval of the Department Director and or Project Manager responsible for the particular budget. The Finance system will not allow the issuance of a Purchase Order when sufficient budget funding is not available. Three types of Purchase Orders are available: 1) Contract Purchase Orders (KPO); Purchase Orders (PO); and Purchase Invoices (PI).
2. A KPO; PO or PI is required for all purchases. A properly completed Purchase Order includes: a description of the item to be procured, the quantity, unit cost, total costs and when applicable attachments including: invoice, contract, vendor quotations, and when and where service will be performed and when and where the items will be delivered.
3. The account name(s) and number(s) must be provided to determine which account will be expensed when the Purchase Order is processed for payment.
4. Purchase Orders are handled by orally notifying the vendor of the approve Purchase Order number. Written confirmation shall be sent to the vendor, if appropriate.
5. Vendors shall be instructed to include their Purchase Order number on all correspondence, including packaging, invoices, credit memos, etc.

B. Types of Purchase Orders:

1. Contract Purchase orders (KPO)

This type of purchase order is used when the purchase of goods and/or services is directly tied to an executed contract. The Contract Purchase Order number is the same as the executed contact number preceded with "KPO" and the amount will the amount of the total contract value which will be encumbered and no longer available for future expenditures. This will be the maximum potential liability for all payments under the executed contract. Progress payments can be accomplished using the KPO number; however payments cannot exceed the total value of the KPO. In the event a contract amendment is executed which either increases or decreases the initial contract amount, the KPO can be modified to reflect

the amendment.. The modification would be similar to the preparation of the original KPO using the contract number preceded by KPO, entering an account number and amount of the amendment--a positive amount for a contract increase and negative amount for a contract reduction.

2. Purchase Orders (PO)

A Purchase Order is used when the good and/or services have not been received and the vendor requires an authorization to sell and invoice Foothill Transit for goods and/or services. The PO number will be assigned by the finance system and the amount should be sufficient to encumber funds to complete the purchase. Normally the goods and/or services are delivered and one payment is executed for full payment. However, POs may be issued for items that are to be delivered over a period of time with payments executed as the goods and/or services are delivered. Using the PO for staggered deliveries and payments is akin to a "Blanket Purchase Order". The total amount of the PO will be encumbered, removing the funding from future expenditures.

3. Purchase Invoice (PI)

Purchase Invoices are to be used when an invoice for goods and/or services has been received from the vendor. The PI number will be assigned by the finance system. The issuance of the PI will initiate payment for the goods and/or services. The PI amount cannot exceed available funding.

C. Receipt of Goods/Service and Authorization to Pay

1. The Department Director, his or her designee or the designated Project Manager is responsible for the receipt of the physical merchandise order when goods are being purchased. Upon receipt, the packing slip shall be compared to the goods received. If correct, the packing slip shall be signed and dated and processed for payment.
2. The Department Director, his or her designee or the designated Project Manager is responsible for the supervision of services to be performed for Foothill Transit. Upon completion of the services, invoice(s) shall be compared to the services received. If correct, invoice shall be signed and dated and processed for payment.

CHAPTER V - VENDOR PROTEST PROCEDURES

A. Purpose

The purpose of these procedures is to set forth the procedures to be utilized by Foothill Transit in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

B. General

In order for a bid protest to be considered by Foothill Transit, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein. A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by Foothill Transit, and will be returned to the submitting party without any further action by Foothill Transit. In all instances where Foothill Transit receives a protest involving a potential contract that will be funded with Federal Transit Administration funds, Foothill Transit will notify the Federal Transit Administration of the protest, provide information concerning the nature of the protest, and keep the Federal Transit Administration informed about the status of the protest.

C. Definitions

For purposes of these Bid Protest Procedures:

1. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
2. The term "contract" means that document to be entered into between Foothill Transit and the successful bidder and offeror.
3. The term "days" refers to normal business days of Foothill Transit staff offices.
4. The term "interested party" means any person: who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and whose direct economic interest would be affected by the award of the contract or by failure to award a contract. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

5. The term “solicitation” means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.

D. Grounds for Protest

Any interested party may file a bid protest with Foothill Transit on the grounds that:

1. Foothill Transit has failed to comply with applicable Federal or State Law;
2. Foothill Transit has failed to comply with its procurement procedures;
3. Foothill Transit has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
4. Foothill Transit has issued restrictive or discriminatory specifications; or,
5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

E. Contents of Protest

1. A bid protest must be filed in writing and must include:
 - a. The name and address of the protestor.
 - b. The name and number of the procurement solicitation.
 - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of Foothill Transit procurement procedures, or specific term of the solicitation alleged to have been violated.
 - d. Any relevant supporting documentation the protesting party desires Foothill Transit to consider in making its decision.
 - e. The desired relief, action, or ruling sought by the protestor.

2. Protests must be filed with:

Director of Procurement
Foothill Transit
100 South Vincent Avenue, Suite 200
West Covina, California 91790

3. All protests must be received at the Foothill Transit address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard or Daylight Time.
4. If any of the information required by this section is omitted or incomplete, Foothill Transit will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

F. Timing Requirements and Categories of Protests

Foothill Transit will consider the following categories of bid protests within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five calendar days prior to the scheduled bid opening or deadline for submittal or proposals, as appropriate, in order to be considered by Foothill Transit. Any protest based on such grounds not filed within this period will not be considered by Foothill Transit. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
2. Any bid protests regarding the evaluation of bids or proposals by Foothill Transit, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with Foothill Transit no later than five calendar days ~~72 hours~~ after the protestor's receipt of Foothill Transit's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the evaluation of bids or proposals, or the contract approval or award will not be considered by Foothill Transit. Notice of award shall be made by over night delivery, email, or facsimile to the successful bidder or proposer. In addition, Foothill Transit will notify all unsuccessful bidders or proposers of its intent to award a contract to the successful bidder or proposer by email at the same time it notifies the successful bidder or proposer if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required. ~~Notification to unsuccessful bidders will be made by over night delivery, email, or facsimile. Any protest filed after such date which raises issues regarding the evaluation of bids or proposals, or the contract approval or award will not be considered by Foothill Transit.~~

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G. Review of Protest by Foothill Transit

1. Foothill Transit will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, Foothill Transit will inform the protestor of any additional information required for evaluation of the protest by Foothill Transit, and set a time deadline for submittal of such information. If Foothill Transit requests additional information, and it is not submitted by the stated deadline, Foothill Transit may either review the protest on the information before it, or decline to take further action on the protest.
3. In its sole discretion, Foothill Transit may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to Foothill Transit relative to the merits of the bid protest. Foothill Transit will set a time deadline for the submittal of such comments, which will be no less than 5 days after Foothill Transit provides notification of the protest.
4. In its sole discretion, Foothill Transit may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by Foothill Transit in deciding the bid protest if it is submitted to Foothill Transit in writing within 3 days after the conference.

H. Effects of Protest on Procurement Actions

1. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, Foothill Transit will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless Foothill Transit determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, Foothill Transit will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
3. Notwithstanding the pendency of a bid protest, Foothill Transit reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - a. Where the item to be procured is urgently required;

- b. Where Foothill Transit determines, in writing, that the protest is vexatious or frivolous;
- c. Where delivery or performance will be unduly delayed, or other undue harm to Foothill Transit will occur, by failure to make the award promptly; or,
- d. Where Foothill Transit determines that proceeding with the procurement is otherwise in the public interest.

I. Summary Dismissal of Protests

Foothill Transit reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by Foothill Transit in a previous bid protest by any interested party in the same solicitation or procurement action.

J. Protest Decisions

- 1. After review of a bid protest by appropriate Foothill Transit staff and/or legal counsel, a recommendation shall be made to the Foothill Transit Executive Director concerning the appropriate disposition of such protest.
- 2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and Foothill Transit's own investigation and analysis.
- 3. The decision of the Foothill Transit Executive Director shall be in writing and shall be the final binding agency action. Except in exceptional circumstances, the decision of the Foothill Transit Executive Director will be issued within 30 days after the date all relevant information is submitted according to the dealings set forth in these procedures.
- 4. If the protest is upheld, Foothill Transit will take appropriate action to correct the procurement process and protect the rights of the protestor, including resolicitation, revised evaluation of bids or proposals or Foothill Transit's determination, or termination of the contract.
- 5. If the protest is denied, Foothill Transit will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

K. Judicial Appeals

A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California.

L. Federal Transit Administration Appeals (Only if Federal funds are used in the procurement)

1. A protestor adversely affected by a bid protest decision of the Foothill Transit Executive Director may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1, as currently in effect as of the date of Foothill Transit's decision on the bid protest. A protestor must exhaust its administrative remedies by pursuing Foothill Transit's protest procedures to completion before appealing Foothill Transit's decision to FTA.
2. Under the provision of the FTA Circular, FTA will only review protests regarding the alleged failure of Foothill Transit to have written protest procedures, the alleged failure of Foothill Transit to have complied with its protest procedures; or Foothill Transit's alleged failure to review a protest when presented the opportunity to do so. FTA will not consider every appeal filed by a protestor merely because a Federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violation of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.
3. In accordance with the FTA Circular, such protest must be filed with FTA's Regional Office no later than five (5) working days after the date when the protestor has received actual or constructive notice of Foothill Transit's final decision or within five (5) working days of the date when the protester has identified other grounds for appeal to FTA (i.e., Foothill Transit's failure to have or failure to comply with its protest procedures or failure to review the protest.

CHAPTER VI - CONTRACT ADMINISTRATION

A. Contract Administration Guidelines

1. A Notice to Proceed will be issued as necessary as determined by the Director of Procurement in consultation with legal counsel and the Project Manager.
2. A letter of agreement shall be sufficient for projects with a specific scope of work and with a value of \$10,000 or less.
3. A full contract agreement will be entered into and executed for all other projects.
4. All agreements will be assigned a contract number, which must be referred to on the Purchase Order and the contractor's invoices.
5. Once the Notice to Proceed or agreement is signed, the Director of Procurement will originate the Purchase Order.
6. The Project Manager will approve all invoices before payment is issued.
7. The Executive Director will sign all contracts unless unavailable in which case contracts will be signed in accordance with the adopted Procurement Policies and Procedures.
8. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
9. The Project Manager is responsible for ensuring that each contractor provides the goods and services specified in the contract in accordance with the terms and conditions of the contract including, but not limited to, product and/or construction specifications. In appropriate circumstances, as determined by the Project Manager, the services of an outside consultant will be retained by Foothill Transit to serve as the construction manager for major construction projects.

B. Federal Procurement Requirements

Since Foothill Transit receives FTA capital assistance, federal procurement requirements apply to all federally funded capital procurements. Some of these requirements are unique and pertain only to federally funded procurements. Listed below are those specific contract terms and/or regulatory or administrative requirements that only apply when federal funds are being utilized for the

procurement. Note that the requirements of the Americans with Disabilities Act, the equal opportunity provisions of the Civil Rights Act of 1964, as amended, and the FTA's Drug and Alcohol Testing Requirements (49 CFR Parts 655) apply to all procurements (if applicable) even if Federal funds are not utilized.

1. State or local geographic preferences, except those expressly mandated or encouraged by Federal statute, are prohibited.
2. For procurements over \$100,000, the Buy America requirements set forth in 49 CFR part 661 apply.
3. Any procurement involving equipment, materials, or commodities suitable for transport by ocean vessel shall contain the clauses required by 49 CFR Part 381: Cargo preference - U.S. Flag Vessels.
4. In the procurement of rolling stock, the requirements of 49 CFR Part 663 concerning Pre-Award and post-Delivery Audits apply.
5. In the procurement of buses, the requirements of 49 CFR Part 665 concerning Bus Testing apply.
6. For public works/construction projects, the requirements of 49 CFR Part 41 (specifically Part 41.117: Seismic safety) apply.
7. For public works/construction projects or activities exceeding \$2,000, the requirements of the Davis-Bacon Act (40 U.S.C. 276a - 276a(7)) and implementing Department of Labor regulations apply.
8. For public works/construction projects in excess of \$2000, the provision of the Copeland Anti-Kickback Act (40 U.S.C. 276c) and implementing Department of Labor regulations apply.
9. For public works/construction projects, the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-222) and implementing Department of Labor regulations apply.
10. For any contract of over \$100,000, the third party contractor will be required to complete and submit certification forms, and, if appropriate, lobbying disclosure forms concerning compliance with 31 U.S.C. 1352.
11. Each third party contractor must acknowledge that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose penalties under the Program Fraud Civil Remedies Act of 1986.

12. Each third party contractor is required to acknowledge the mandatory standards and policies related to every efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et. seq.).
13. For public works/construction projects, each third party contractor must agree to comply with any federal environmental and resource conservation requirements that apply to the construction activities under the terms of the Contract. The contractor is required to report any violation of standards, orders or regulation issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) resulting from any activity of the contractor in connection with the performance of the contract to FTA and to the appropriate U.S. EPA regional office. The contract is responsible for the disposal of hazardous materials, in accordance with applicable federal, state and local law and guidelines.
14. Each third party contractor for contracts over \$25,000 must certify that they will not enter into contracts for over \$25,000 with suspended or debarred contractors (Executive Order 12549; 49 CFR part 29).
15. Each third party contractor must comply with Civil Rights requirements concerning nondiscrimination and equal employment opportunity (29 U.S.C. 623; 42 U.S.C. 2000, 6102, 12112; 12132; 49 U.S.C. 5332; 29 C.F.R. Part 1630; 41 C.F.R. Parts 60 et. Seq.).
16. Each third party contractor must comply with appropriate Patent and Rights in Data requirements (37 C.F.R. Part 401 and 49 C.F.R. Part 18).
17. Each third party contractor must comply with the Department of Transportation Disadvantage Business Enterprise (DBE) regulations (49 C.F.R. Part 26).
18. Fly America. Each third party contractor must comply with 49 U.S.C. 40118 in accordance with the General Service Administration's regulations at 41 CFR Part 301-10.

C. Bonding Requirements

1. Purpose

To ensure uniform and equitable application of bonding requirements in compliance with state and federal regulations, and protect the interests of Foothill Transit.

2. Responsibility

It shall be the responsibility of the Director of Procurement to ensure that these guidelines are followed and applied impartially.

3. Types of Bonds

- a. Bid Guarantee: This shall consist of a firm commitment, such as a bid bond, certified or cashier's check, or other negotiable instrument accompanying a bid as assurance the bidder will, upon acceptance of the bid by Foothill Transit, execute such contractual documents as may be required within the time specified. Foothill Transit will require bid bonds for all public works/construction projects in excess of \$6,500, for any equipment or services contract of a critical nature to the operations of Foothill Transit, or for any equipment contract in which the equipment is specifically manufactured for Foothill Transit. Public works/construction projects require a bid bond of ten (10) percent of the amount bid. Equipment purchases and service projects requiring a bid bond will have a bond requirement of up to five (5) percent of the amount bid. Foothill Transit will require proposal bonds for any equipment or services contract of a critical nature to the operations of Foothill Transit. Service projects requiring a proposal bond will have a bond requirement of up to five (5) percent of the amount bid. Failure of bidders to comply with these requirements will result in a determination by the Director of Procurement that the bid is non-responsive.
- b. Performance: This is a bond executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract. Performance bonds shall be written by a corporate surety registered in the County of Los Angeles in the State of California. Foothill Transit will require performance bonds for all public works/construction projects in excess of \$6,500, for any equipment or services contract of a critical nature to the operations of Foothill Transit, or for any equipment contract in which the equipment is specifically manufactured for Foothill Transit. Public works/construction projects require a performance bond of 100 percent of the amount of the contract. Equipment purchases requiring a bond will have a bond requirement of up to twenty (20) percent of the amount of the contract. Service projects requiring a bond will have a bond requirement of up to 100 percent of the amount of the contract.
- c. Payment: This is a bond executed in connection with a Contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the

contract. Payment bonds shall be written by a corporate surety registered in the County of Los Angeles in the State of California. Foothill Transit will require a bond for public works/construction contract over \$25,000. The required payment bond will be 100 percent of the amount of the contract.

4. Procedures

Bid guarantees and performance bonds are required by the State of California for all public works/construction projects in excess of \$6,500. Payment bonds are required by the State of California for all public works/construction projects in excess of \$25,000.

Bid guarantees and/or performance bonds are not required unless the procurement involves equipment or services of a critical nature to the operations of the agency and/or is specifically manufactured for the agency thereby making procurement from another source difficult or time consuming. Payment bonds are not required under these circumstances.

Required bonding levels are:

Type of Project	Type of Bond		
	Bid	Performance	Payment
Public Works/Construction (as applicable)	10%	100%	100%
Materials and Equipment	up to 10%	up to 20%	Not Required
Services (except for personal or professional)	up to 5%	up to 100%	Not Required

5. Forfeiting of Bonds

All contracts that contain bonding requirements shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, Foothill Transit will claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

D. **Insurance Requirements**

1. Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability and other areas. The insurance requirements for each project are established by Foothill Transit.

2. In assessing risk, Foothill Transit will consider the following project information:
 - a. Scope of work.
 - b. Contract amount.
 - c. Whether the project requires the contractor to operate on Foothill Transit property.
 - d. The ultimate use of the good or service provided by the contractor.
 - e. Previous experience associated with similar or related projects.
3. Once the insurance requirements are defined, they must be included in the procurement document.
4. Prior to issuing the final contract, the Director of Procurement will request that the Executive Director approve the insurance certificate and signify his or her approval by a written memo to the Director of Procurement. A copy of this memo and the insurance certificate are to be kept in the project file.
5. The Director of Procurement shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance.

E. Liquidated Damages

1. The Project Manager will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time for a public works/construction contract or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract, and the rate must be specified in the contract. If liquidated damages are assessed in a Federally funded contract, the Project Manager in consultation with the Finance Manager will ensure that, as appropriate, the liquidated damages recovered are credited to the project unless the Federal Transit Administration permits otherwise.
2. A liquidated damages clause may be used if it is determined that:
 - a. The time of delivery of goods or services to Foothill Transit is critical, and Foothill Transit can expect to suffer damage if the delivery is delinquent.

- b. The extent or amount of such damage would be difficult or impossible to determine.

F. Indemnification

All contracts shall provide that the contractor indemnify and save harmless Foothill Transit, its members, Executive Board Members, officers, agents, management consulting staff, and other consultants or contractors as appropriate from any injuries and or damages received by any person during any operations connected with the Contract, by use of any improper materials, or by any act or omission of the Contractor or his subcontractor, agents, servants or employees.

G. Termination for Convenience

All contracts shall contain a provision allowing for the termination of the contract for convenience by Foothill Transit and prescribe methods in which the contractor may calculate cost of work already performed, and termination settlement costs. All contracts supported by federal grants that exceed \$10,000 are to include provisions that allow Foothill Transit to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement.

H. Dispute Resolution

All contracts shall contain provisions providing that any dispute between the contractor and Foothill Transit relating to the implementation or administration of the contract in question be resolved in accordance with a dispute resolution process set out in the contract.

I. Project Control File

The project control file shall be maintained during the procurement process, throughout the term of the contract and for three years following completion of all work.

The control file consists of the following sections:

1. Vendor list.
2. Rationale for type of procurement used.
3. List of all vendors responding to the procurement.
4. All documentation relating to the selection process, including, but not limited to: evaluation score sheets, bids, rationale for selection and/or rejection of respondents, and the source selection plan.
5. Notice to proceed.
6. Final contract.
7. Executive Board report, if required.

8. Purchase Requisition.
9. All correspondence.
10. Proof of insurance.
11. Bond documents.
12. Notice of Solicitation.
13. Legal advertisement.
14. Original procurement document and all addenda.
15. Original responses to the procurement.
16. DBE information.
17. Returned mail.

J. **Vendor File**

1. The Vendor File consists of a listing of businesses, organizations, and enterprises that could provide quality goods and services specific to Foothill Transit.
2. A vendor may be declared “not responsible” and removed from the Vendor File if the vendor:
 - a. Repeatedly misses deadlines in deliveries of goods and services.
 - b. Provides unsatisfactory goods and services.
3. Before declaring a vendor to be “not responsible,” the Director of Procurement will make every effort to give the vendor an opportunity to correct the problem. The following steps must be followed:
 - a. Notify vendor of possible disqualification from vendor list
 - b. If no response to the first notice is received, issue a second notice
 - c. If no response to the second notice is received, the third notice will be issued informing the vendor that it has been deemed “not responsible” and removed from the Vendor file effective ten days from the date of the third notice.
4. A file will be kept of all activity and communications with the vendor. All actions must be fully documented and the file will be retained for a period no less than two years.
5. In order for a vendor to be reinstated into Foothill Transit’s Vendor File, the vendor must file a request with the Director of Procurement in writing declaring to be a “responsible vendor.”
6. The reinstatement letter must include the following:
 - a. Reason vendor failed to respond to procurement requests.

- b. Reason vendor provided slow or unsatisfactory deliveries.
- c. Steps vendor has taken to eliminate slow or unsatisfactory deliveries.
- d. Statement why vendor should be reconsidered as a responsible vendor.
- e. Promise to maintain their responsible vendor status.

K. Types of Contracts and Payment Terms

1. Except as provided in this section, any type of contract which will promote the best interest of Foothill Transit may be used. A type of contract other than firm, fixed-price may be used only when a determination is made by the Director of Procurement that such contract is likely to be less costly than the firm, fixed-price contract or that it is impractical to obtain the supplies, services or construction required by the firm, fixed-price contracting method.
2. A firm, fixed-price contract establishes a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
3. A cost-reimbursement contract is one in which the contractor is paid its reasonable, allocable and allowable costs of performance regardless of whether the work is completed.
4. A time and material contract can be used only:
 - a. After a determination by the Director of Procurement that no other type of contract is suitable; and
 - b. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.
5. Cost plus percentage of cost contracts are prohibited.
6. Advance payments utilizing Federal Transit Administration funds are prohibited unless prior written concurrence is obtained from the Federal Transit Administration.
7. Progress payments will only be made on the basis of costs incurred, or, in the case of construction contracts or certain major acquisition contracts, on the basis of percent of completion or major milestones completed or major components procured. In such cases, legal counsel will ensure that the contract provides that Foothill Transit obtain adequate security including taking title to major components, letters of credit or equivalent means to protect Foothill Transit's interests.

